

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

K.W., individually and on behalf of B.W., a child
with a disability,

Plaintiff,

COMPLAINT

-against-

Case No.

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant.

Plaintiff K.W., by and through her attorneys, CUDDY LAW FIRM, PLLC, for her complaint hereby alleges:

1. This is an action brought pursuant to the fee-shifting provisions of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1415(i)(3).
2. Plaintiff K.W. and B.W. reside in the County of Kings, State of New York.
3. B.W. is a child with a disability as defined by IDEA, 20 U.S.C. § 1401(3)(A).
4. K.W. is the parent of B.W. as defined by IDEA, 20 U.S.C. § 1401(23).
5. Defendant New York City Department of Education is a local educational agency as defined by IDEA, 20 U.S.C. § 1401(19), and, as such, is obligated to provide educational and related programs and services to its students in compliance with the applicable federal and state statutes, regulations, and the U.S. Constitution, and is subject to the requirements of 20 U.S.C. § 1400 *et seq.*, and the regulations promulgated thereunder.

JURISDICTION AND VENUE

6. Jurisdiction is predicated upon 28 U.S.C. § 1331, which provides the district courts with original jurisdiction over all civil actions arising under the laws of the United States, and upon the fee-shifting provision of IDEA, 20 U.S.C. § 1415(i)(3)(A), which provides that the district courts of the United States shall have jurisdiction of actions brought under section 1415(i)(3) without regard to the amount in controversy.

7. Venue is predicated upon 28 U.S.C. § 1391(b)(1) based upon the residence of the defendant.

FACTUAL BACKGROUND—CASE NUMBER 164415

8. On November 11, 2016, plaintiff K.W. initiated an impartial due process hearing on behalf of her child B.W., alleging a denial of a free appropriate public education (FAPE) for the 2014-2015, 2015-2016 and 2016-2017 school years and seeking various relief.

9. This case was assigned Impartial Hearing Office Case Number 164415.

10. An impartial due process hearing was held for K.W. and B.W. on March 15, April 6, and May 17, 2017.

11. On August 10, 2017, an impartial hearing officer (IHO) issued a Finding of Facts and Decision (FOFD) in favor of the parent, finding a denial of FAPE and awarding relief including an independent neuropsychological evaluation, an independent speech and language evaluation, an assistive technology evaluation, a

functional behavioral assessment, a revised Individualized Education Plan including a small class placement and one-to-one SETSS services, and transportation.

12. On November 21, 2017, plaintiff, through her counsel, submitted a demand for attorneys' fees to defendant's Office of Legal Services.

13. As of the date of this complaint, defendant has failed to settle the attorneys' fees in this matter.

FIRST CAUSE OF ACTION

14. Plaintiffs repeat and reallege paragraphs 1 through 13 as if more fully set forth herein.

15. Plaintiff K.W. initiated an impartial hearing on behalf of B.W.

16. Plaintiff K.W. prevailed at the impartial hearing by obtaining a finding of facts and decision from the IHO ordering the relief demanded by plaintiff K.W.

17. Plaintiff K.W. having prevailed in the underlying proceedings hereby demands reasonable attorneys' fees and costs pursuant to 20 U.S.C. § 1415(i)(3).

WHEREFORE, plaintiffs respectfully request that this Court:

- (1) Award to plaintiff K.W. the costs, expenses and attorneys' fees for the administrative proceedings in the matter of B.W. pursuant to 20 U.S.C. § 1415;

- (2) Award to the plaintiff the costs, expenses and attorneys' fees of this action pursuant to 20 U.S.C. § 1415; and
- (3) Grant such other and further relief as the Court deems just and proper.

Dated: Auburn, New York
June 8, 2018

Yours etc.,

s/ Jason H. Sterne

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